

**ODISHA ELECTRICITY REGULATORY COMMISSION  
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,  
BHUBANESWAR-751021**

\*\*\*\*\*

**Case No. 52/2016**

M/s. Jindal India Thermal Power Ltd. (JITPL) ..... Petitioner

Vrs.

Central Electricity Supply Utility (CESU) ..... Respondent

**In the matter of:**      **An application under Sec. 86(1)(b), 86 (1) (f) of the Electricity Act, 2003 read with Regulation 112 of the OERC Distribution (Conditions of Supply ) Code,2004 for seeking refund of Security deposit of Rs.13,06,04,400/- paid in terms of the PSA dt.03.10.2013 for the security of 29 MVA power, along with interest and other credits (Reliability Surcharge) for an amount of Rs. 3,46,06,480/- for the period from Sept, 2013 to Sept.,2016 and further interest accrued on the said Security Deposit.**

For Petitioner:      Shri Matrugupta Mishra, Advocate on behalf of M/s. JITPL

For Respondents:      Shri S. K. Harichandan, AGM (Law) and Shri Chittaranjan Swain, DGM (Comm.), CESU

**Date of Hearing: 09.05.2017**

**Date of Order:17.08.2017**

**ORDER**

The petitioner M/s Jindal India Thermal Power Ltd. (JITPL) has filed the present application under Sec. 86(1)(b), 86 (1) (f) of the Electricity Act, 2003 seeking appropriate directions to respondent CESU to exit the Power supply Aggrement (PSA) dated 03.10.2013 on account of the same being infructuous, in exercise of power under Regulation 112 of OERC (Conditions of Supply) Code 2004 read with inherent power of Commission under Regulation 76 of OERC (conduct of Business) Regulations, 2004 for removal of difficulty.

2. The Petitioner, M/s JITPL has setup a 1200 MW (2X600MW) coal based Thermal Power Plant at Angul under the license area of CESU. The petitioner has entered into a power supply agreement with CESU on 03.10.2013 for drawal of 29MVA start-up/ emergency power through GRIDCO for a period of five years from the date of supply. As per terms of PSA, the petitioner has deposited the security amount of Rs.13.06 crore with CESU.
3. In the said PSA it was agreed between the parties that the agreement executed for a period of five years from the date of initial power supply (initial period of agreement) and thereafter, could be terminated by either party by giving a two months notice in writing, intimating the

other party of the intention to terminate the Agreement. Further, it is stated in the PSA that with respect to the connectivity, Metering, Billing and Commercial mechanism for release of 29 MVA power shall be governed by the minutes of meeting held on 14.08.2013 among GRIDCO, OPTCL, CESU & JITPL. In the meeting, it was decided that till synchronization and commercial operation of Unit-I & II of IPP, they will draw start-up power from CESU. Thereafter, M/s JITPL may draw the required emergency/ start-up power from the CTU network through UI or from CESU. Since, the 400 kV line from Anugul is a part of Inter State Transmission System, M/s JITPL may pursue and obtain necessary approval from ERPC and request PGCIL to provide the energy meters in the 400 kV LILO lines at the Premises of M/s JITPL.

4. Subsequently, on synchronization of 1<sup>st</sup> Unit of 600 MW of JITPL with Grid , JITPL has been taken over by ERLDC as a regional entity w.e.f. 28.03.2014 as per ERLDC letter dated 17.04.2014. Further as per the decision of the 92nd OCC meeting, ERLDC would start scheduling power to be injected by the petitioner. Accordingly, the drawal and injection of power by M/s JITPL was accounted by ERLDC in their deviation accounts w.e.f. dated 28.03.2014 and as such JITPL is no more a consumer of CESU w.e.f. 28.03.2014.
5. The SLDC, Odisha has intimated OPTCL that since the petitioner has already been converted into a regional entity, the State Energy Accounting for the month of March, 2014 has accordingly been revised considering the energy drawn by the petitioner upto 23:59:59 hrs. of 27.3.2014. Hence, it was requested to revise the CESU bill for the said month accordingly.
6. The petitioner submitted that the clause of PPA does not permit termination of agreement prior to completion of the initial period of Agreement and that the said regulatory trapping was detrimental to the interest of both CESU and JITPL. The petitioner while pursuing the case has come across the regulatory constraint provided under the Supply Code. The PSA makes it mandatory for the parties to abide by the terms and conditions of the Supply Code. Under the said code Regulation 16 deals with termination of agreement, which gives no room for termination of a Supply Contract before the completion of initial period of agreement. The expression “Initial period of agreement” is defined under Regulation 2(w) of the Supply Code which is a period of five years in respect of the petitioner’s category. Therefore, being constrained by such regulatory provision and there being no room to cater to the present facts and circumstances, the petitioner has prayed to the Commission to invoke Regulation 112 of the Supply Code to remove difficulties arising in giving effect to the provisions of the Supply Code.

7. The Commission has during the hearing on 09.05.2017 also raised a query as to what would be the implication of termination of the contract on the Respondent before the initial period of the contract. The Petitioner stated that there would be no implication on the distribution licensee as the contract was only for supply of start-up power till synchronization and that neither commercially nor technically the termination of the contract before the initial period was going to create any difficulty for the respondent.
8. M/s. JITPL has prayed to the Commission to
- allow the petitioner to terminate the Power Supply Agreement (PSA) with CESU on 03.10.2013 for drawal of 29 MVA start up / emergency power for their IPPs w.e.f. 28.03.2014.
  - direct the respondent (CESU) to refund the security Deposit of Rs.13,06,04,400/- deposited by them on 03.10.2013 along with the interest amount of Rs.3,26,16,240/-.
  - direct the respondent to refund the Reliability Surcharge amounting to Rs.19,90,240/- along with the interest.
  - invoke the jurisdiction of the commission to remove the difficulty by virtue of statutory provision enshrined in Regulation 112 of OERC Distribution (Condition of Supply) code 2004.
9. The respondent (CESU) in its rejoinder submitted that the Commission in exercise of power conferred under Section 181 (2) (t), (v), (w) and (x) read with Part-VI of the Electricity Act, 2003 and Orissa Electricity Reform Act, 1995, has made the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 (here-in-after called Supply Code) and the same has been published in the Orissa Gazette on 28th May 2004. Regulation 16 (3) of the Code provides that consumer may terminate the agreement after giving at least two months notice to the licensee only after completion of initial period of agreement i.e. five years from date of agreement. The initial period of agreement of M/s. JITPL has not been completed till now as the agreement for the above power has been executed on 03.10.2013. So, termination of power supply agreement with the firm has not been made.
10. Regulation-22 of the Supply Code, 2004 deals with refund of security deposit after termination of the agreement. It provides that the security deposit shall be returned to the consumer only after the termination of the agreement and after adjustment of outstanding dues, if any, within a period of one month from the date of termination. When the Code provides specific procedure for termination of the agreement as well as for refund of the security deposit, the same procedure is to be followed and not otherwise.

11. It is submitted by the Respondent that for the aforesaid reasons the claim of the consumer is not sustainable. The consumer being a regional entity on 28.03.2014, ipso-facto cannot be the reason for automatic termination of the agreement signed with CESU. Even though, the consumer is a regional entity, he continues to be a consumer of CESU on the strength of the power supply agreement dated 03.10.2013. On the strength of this subsisting agreement with CESU, it can draw power from CESU.
12. In paragraph-17 of the petition, the consumer has contended that the provision of the Supply Code is per se violative of the Indian Contract Act. The Respondent submitted that this issue is not to be adjudicated before the Commission, and the consumer so desires he can approach the appropriate court of Law.
13. The Respondent has further submitted that since the provision of the Supply Code is clear without any ambiguity and not inconsistent with the Electricity Act, 2003, the contention of the petitioner is not sustainable. The consumer during course of the argument has relied upon the decision of the Supreme Court on the question of "Removal of the difficulties" reported in (1975) 3 Supreme Court Cases 765. In Para 40 of the judgment the Hon'ble Apex Court has clearly held that in no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act. So, there is no ambiguity in the Regulations of the Supply Code pertaining to termination of the agreement and refund of security deposit. So, the prayer of the petitioner to invoke the power under Regulation 112 of the Supply Code is unwarranted and liable to be rejected. In view of above the present petition being not maintainable is liable to be dismissed.
14. Both the parties were heard and their written submissions taken into record. The Commission observed that the submissions made by M/s JITPL in the present petition is basically to invoke Regulation 112 of the Supply Code to remove difficulties arising in giving effect to the provisions of the Supply Code. As per Regulation 16 (3) of OERC Distribution (Condition of Supply) Code, 2004 ( as amended upto May, 2011) consumer may terminate the agreement after giving at least two months notice to the licensee only after completion of initial period of agreement. The initial period of agreement of M/s. JITPL has not been completed yet as the agreement for the above power has been executed on 03.10.2013. The refund of Security deposit arises only after termination of agreement. Regulation 112 of the Supply Code to remove difficulties can only be invoked when a practical difficulty arises to give effect to the provisions of the Supply Code. While executing the agreement, the petitioner is well aware of connectivity issues of generating stations as well as provision of Supply Code. Moreover, the licensee has to recover its cost

or be compensated suitably to recover the cost incurred in such cases. The Commission does not find any difficulty in implementation of the Regulations of Supply code. Hence, there is no ground for the Commission to invoke Regulation 112 of the Supply Code to remove difficulties. However, the Commission directs CESU to pay the petitioner interest on the security deposit made by the petitioner as per provisions of Regulation 21 of the Supply Code, 2004. Further, the petitioner is at liberty to approach the GRF for settlement of the billing dispute concerning the Reliability Surcharge.

15. The case is disposed of accordingly.

**Sd/-**  
**(S. K. Parhi)**  
**Member**

**Sd/-**  
**(A. K. Das)**  
**Member**

**Sd/-**  
**(U. N. Behera)**  
**Chairperson**